



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCB/146337

PRELIMINARY RECITALS

Pursuant to a petition filed January 04, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 20, 2013, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: L. Boyenga

Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. Her household size is three persons.
2. Petitioner filed this appeal seeking backdated BadgerCare+ benefits for the month of May 2012.
3. Petitioner applied for BadgerCare+ benefits in July 2012. That application sought backdating to May 2012.

4. Petitioner's July 2012 BadgerCare+ application was denied for May 2012. A Notice of Decision dated August 21, 2012 was sent to Petitioner at the above address and informed her of that denial. It showed the income the agency counted when determining eligibility for May 2012. It also contained appeal instructions and notes the appeal deadline was October 8, 2012.
5. This appeal was filed on January 4, 2013.
6. Agency did review of Petitioner's request for backdated coverage in preparation for this hearing and realized that it actually counted less income for Petitioner for May 2012 than the household received.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the notice of the county agency decision. *§49.45(5)(a), Wis. Stats.* Here Petitioner's appeal is well past the 45 day deadline for appealing the August 21, 2012 denial. The Notice of Decision did list the income attributed to the household and did contain appeal rights. I conclude that the appeal is not timely.

Even if, however, the appeal were timely I would not find for Petitioner.

The income limit for adult BadgerCare+ eligibility is 200% of the Federal Poverty Level (FPL) which is \$3181.67 for a group of 3 in 2012. *See BEH, §§16.1 and 50.1 and OPS Memo 12-05, effective 2/1/12.* The gross earned and unearned income of all eligible individuals in the household over age 18 is counted. *BEH, §16.4.* Children under age 19 are typically BadgerCare+ eligible but where income is over 200% of the FPL, a premium is due for the children in the group. *BEH, §19.1.* Children may have eligibility backdated up to the first day of the third month prior to the month of application provided household income is below 150% of the Federal Poverty Level. *BEH, §25.8.1.* Petitioner's household income was over \$3181.67; the 200% of the FPL standard. While it is true that a request for backdating may be made at any time (*See BEH, §25.8.1.*), nothing here has changed since the August 21, 2012 denial.

CONCLUSIONS OF LAW

That this appeal was not timely filed thus the Division of Hearings and Appeals does not have jurisdiction.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

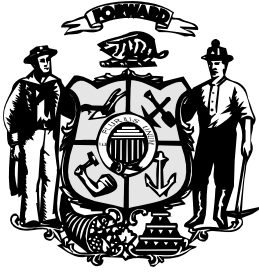
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of March, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 21, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability